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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,591	11/13/2003	Jason A. Demers	1062/E06	1992
2101 7590 05/09/2007 BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			EXAMINER MANOHARAN, VIRGINIA	
			ART UNIT 1764	PAPER NUMBER
			MAIL DATE 05/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/713,591

Applicant(s)

DEMERS ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/2/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 16-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-15 and 37-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are incomplete for omitting essential structural cooperative relationships of elements, e.g., the tie-in or structural connection of the claimed "liquid waste output" relative to the other elements in the system. See MPEP § 2172.01.

Also reciting –an output for discharging of distilled liquid product – rather than "an output for collection" is better as it avoids ambiguity in the claims. The term "collection", for example, would require a chamber, container or the like. See also, e.g., only claim 8.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 and 37-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of 1-18, 25 and 35 of copending Application No. 10/713,617 in view of Kraner (6,497,555).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the same reasons as set forth at the paragraph bridging pages 3- 4 of the previous Office action.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-15 and 37-42 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-18, 25 and 35 of copending Application No. 10/713,617. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter as indicated at the last paragraph, page 4 of the previous Office action.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-8, 10-13, 15 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mugele (5,169,502) in view of Kraner (6,497,555) and Silinski et al (5,102,503).

The above references are applied for the same combined reasons as set forth at the last paragraph, page 5, of the previous Office action. Silinski is applied to teach that the claimed "liquid waste output" is conventional in the art. To discharge, treat or collect any output processed from a system, in the manner as taught by Silinski, would have been an obvious expediency in the art.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mugele (5,169,502) as modified by Kraner (6,497,555) and Silinski et al (5,102,503) as applied to claims 1-4, 7-8, 10-13, 15 and 37-40 above, and further in view of Trusch (4,316,774) or Kikkawa et al (4,437,933).

The above references are applied for the same combined reasons as set forth at page 6, second full paragraph, of the previous Office action.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mugele (5,169,502) in view of as modified by Kraner (6,497,555) and Silinski et al (5,102,503) as applied to claims 1-4, 7-8, 10-13, 15 and 37-40 above, and further in view of Sneed et al (3,603,082) or Straka (5,761,903).

The above references are applied for the same combined reasons as set forth at fourth full paragraph, page 6 of the previous Office action.

Claims 5-6 and 41-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims

Applicants' arguments filed March 2, 2007 have been fully considered but they are not persuasive.

Applicants arguments such as: "In Mugele, the compressor comprises a gas-ring pump connected to a vacuum pump downstream, to enhance vaporization of the process liquid and optimize heat exchangeThe system is not a liquid purification system.....
...The installation merely recycles liquid through the installation without a purification or distillation process, and without collection of a purified/distilled liquid product..... The combination of Mugele and Kraner fails to teach the output for collection of distilled liquid product or the liquid waste output.." are not persuasive of patentability because of the following reasons:

The fact that Mugele has a vaporizer/evaporator and condenser tells an artisan that distillation is naturally or inherently occurring in the system of Mugele since, by definition, distillation is comprised of both evaporation and condensation. That is, the liquid being processed is separated from any impurities and distilled product is inherently produced upon condensation.

References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures ,

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Furthermore, the "downstream preparation system 10" at col. 3, lines 1-5 of Mugele would at least be suggestive of the argued "output for collection of distilled liquid product". Silinski et al teaches that the claimed liquid waste output is not unobvious subject matter, nor is it an evidence of criticality in the art. See e.g. col. 2, lines 66-68 thru col. 3, lines 1-31. Moreover, Kraner was not applied for reasons as argued, i.e., to teach the claimed "output for collection of distilled liquid product or the liquid waste output", but was cited for reasons of record. That is, to teach or suggest the claimed "an electric motor having a motor rotor and motor magnets to power the drive shaft wherein the motor rotor and magnets are hermetically sealed within a liquid fluid pressure boundary of the liquid ring pump" as claimed in section e) of claim 1.

The arguments with regards to Keller is persuasive and this alternative reference has been dropped from the above rejection.

Thus, in the absence of anything which may be "new" or "unexpected result." a prima facie case of obviousness has been reasonably established by the art and has not been rebutted. Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicants' amendments, or the Brief do not suffice. In re Linder, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moked et al teaches that monitoring the level is known in the instrumentation art.

This application contains claims 16-36 drawn to a nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

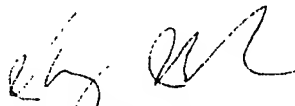
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-272-1450.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444.

The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JIRGINIA MANOR
PRIMARY EXAMINER
ART UNIT 1764